

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

RICHARD MILLNER, * Civ. 12-1003
*
Plaintiff, *
*
-VS- *
*
*
JILL MILLNER; CHOICE FINANCIAL * STIPULATION FOR
GROUP; CENTRAL LIVESTOCK * JUDGMENT OF PARTITION
ASSOCIATION, LLC; and the *
UNITED STATES OF AMERICA *
(Internal Revenue Service), *
*
*
Defendant. *

THIS STIPULATION is made between Richard "Rick" Millner, Jill Millner, Choice Financial Group, Central Livestock Association, LLC, and the United States of America (Internal Revenue Service).

1. Richard Millner and Jill Millner hold a joint-tenancy in the following real property in Marshall County, South Dakota:

- N½NE¼ of Section 16, Township 128N, Range 53W of the Fifth P.M., Marshall County, South Dakota.
- Lots 1-6, Block 14, Rosholt's Addition, Veblen.
- Vacated Blocks 17, 18, 19, 20, 21, 22, 23, and 24, Rosholt's Addition, Veblen.
- Outlots A through M, Edson's Addition, Veblen.

(the "Real Property").

2. Several entities hold interests of record in the Real Property. A true and correct copy of a title commitment prepared by Marshall Land and Title Co., Inc., dated

August 25, 2011, is attached as Exhibit A and incorporated herein by this reference.

3. Choice Financial Group holds a mortgage in the amount of \$175,000, which is secured by the Real Property, and was recorded with the Marshall County Register of Deeds on October 19, 2005, at 10:00 o'clock A.M. in Book 157, Pages 195-207 (the "Choice Mortgage"). A true and correct copy of the Choice Mortgage is attached hereto as Exhibit B and incorporated herein by this reference.
4. Defendant United States of America (Internal Revenue Service) holds a federal tax lien, #56635, against O Dakota Heifers, a partnership in which Richard Millner was a general partner. The federal tax lien was filed by the Chicago, Illinois internal revenue office and was signed by R.A. Mitchell on behalf of Debra A. Stoley on November 18, 2008. The federal tax lien in the amount of \$245,887.62 was filed for record on December 1, 2008, at 10:20 o'clock A.M. A true and correct copy of the Notice of Federal Tax Lien is attached as Exhibit C and incorporated herein by this reference.
5. Choice Financial Group holds another mortgage in the amount of \$250,000, which is secured by the Real Property, and was recorded with the Marshall County Register of Deeds on July 6, 2010, at 10:40 o'clock A.M. in Book 173, Pages 780-792.

A true and correct copy of this Choice mortgage is attached as Exhibit D and incorporated herein by this reference.

6. Central Livestock Association, LLC ("Central Livestock"), as successor in interest to Central Livestock Association, Inc., and Genex Corporation, Inc., hold a mortgage in the amount of \$575,000.00 which is secured by the Real Property, and was recorded with the Marshall County Register of Deeds on December 23, 2010, in Book 176, Pages 150-152 (the "Central Livestock Mortgage"). A true and correct copy of the Central Livestock Mortgage is attached hereto as Exhibit E and incorporated herein by this reference.
7. Richard Millner avers he filed this suit seeking to partition the Real Property because the federal tax lien attaches only to Richard Millner's interest in the joint tenancy Real Property. Richard Millner filed an action in the Fifth Judicial Circuit Court seeking this relief, which was subsequently removed, by the United States to the United States District Court for the District of South Dakota (Civ. 12-1003) (the "Pending Litigation").
8. Jill Millner avers she hopes to obtain an operating loan from Choice Financial Group for the 2012 growing season, which she agrees will be secured by Jill Millner's partitioned portion of the Real Property (i.e. N1/2NE1/4 of Section 16, Township 128N, Range 53W of the Fifth P.M.,

Marshall County, South Dakota); and she avers the removal of the federal tax lien encumbrance from the title of this parcel of the Real Property is a prerequisite set by Choice Financial. Richard Millner agrees that his partitioned land will not be security for the operating loan.

9. The United States has sought clarification as to the proposed partition of the Real Property, and the effect of the partition on the interests of record set out in Exhibit A.
10. Richard Millner has proposed and the parties agree to the following for purposes of entering into this Stipulation for Judgment of Partition:

A. Real Property Division: Reference is made to the appraisal dated August 26, 2011, which is attached hereto as Exhibit F and incorporated herein by this reference. The mortgage balance split is based on the Choice Financial payoff calculated up to March 15, 2012, which totals \$144,401.70.

	Parcels Owner Post-Partition	Appraisal Value	Percent	Mortgage Split
Rick	Parcel 1: Outlots A-M, Edson's Addn. Parcel 3: Lots 1-6, Rosholt's Addn. Parcel 4: Vacated Blocks 17, 18, 19, 20, 21, 22, 23 and 24	\$ 35,500 \$106,800 \$ 28,400 \$170,700	47.1%	\$68,013.20

Jill	Parcel 2:	\$193,500	52.9%	\$76,388.50
	N½NE¼ of Sec.16			
	- T128N - R53W			

Choice Financial, Jill Millner, and Richard Millner will execute an Amendment of Note and Mortgage, and Jill Millner and Richard Millner will execute quit claim deeds reflecting this division. True and correct copies of the Amendment of Note and Mortgage and quit claim deeds are attached hereto as Exhibits G, H, and I and are incorporated herein by this reference.

B. Property Taxes: All property taxes due and owing to Marshall County with respect to all of the Real Property will be paid in full contemporaneously with the closing on the financing the Millners are seeking.

C. Payment to the United States: Since the aforementioned division of the property does not result in a 50-50 split of the equity in the property, a cash payment to the United States of America in the amount of \$3,606.18 will be made by Jill Millner at the time of partition to equalize the interests of the parties.

D. No effect on lien priority: Except as provided in paragraph 11, nothing in this agreement will affect the existing lien priority of the encumbrances described herein on the partitioned land of Richard Millner or the partitioned land of Jill Millner.

11. If the terms set forth in paragraph 10 are strictly adhered to, the parties will agree not to contest the partition of the Real Property as proposed in the Pending Litigation and, following partition, will consent to the entry of an order releasing the federal tax lien as to the Jill Millner parcel legally described as follows:

NE^{1/4} of Section 16, Township 128N, Range 53W of the Fifth P.M., Marshall County, South Dakota.

12. This Stipulation contains the full agreement of the parties and may not be modified, altered, or changed in any manner, except by written agreement executed by all parties.

Dated:

4/10/2012

Rick Millner

Dated:

4/10/2012

Jill Millner

(Remainder of signature page intentionally left blank.)

CHOICE FINANCIAL GROUP

Dated: 4/11/12

By Paul M. West
Its A.V.P. Business Banking

(Remainder of signature page intentionally left blank.)

CENTRAL LIVESTOCK ASSOCIATION,
LLC

Dated: April 10, 2012

By Ann S. Z.
Its Attorney

(Remainder of signature page intentionally left blank.)

Dated: 4-10-12

UNITED STATES OF AMERICA
(Internal Revenue Service)
BRENDAN V. JOHNSON
UNITED STATES ATTORNEY
By Jan L. Holmoe
Its Asst. United States Attorney

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